IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Gordhan and others vs. State of Raj. & others.

(S.B. Civil Writ Petition No.3447/1993)

DATE OF ORDER ::: FEBRUARY 24, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. M.S. Singhvi, for the petitioners.

Mr. L.R. Upadhyay, Dy.GA, for the respondents.

REPORTABLE

BY THE COURT :

Heard learned counsel for the parties.

Brief facts of the case are that about 125 plots were sold by Gram Panchayat, Lathi by conducting auction during the period from 1.10.1983 to 8.5.1984. The Collector, Jaisalmer received certain complaints that the plots were sold by Gram Panchayat below the market rate and thereby loss has been caused to the Government. The Collector, Jaisalmer issued notice to Gram Panchayat, Lathi and examined the files of Gram Panchayat and cancelled the allotment of all 125 plots vide order dated 13.8.1984. The said order was

challenged by way of two writ petitions namely, (1) S.B. Civil Writ Petition No.801/1985 (Gordhan Ram and 65 others vs. State of Rajasthan and others) and (2) S.B. Civil Writ Petition No.3001/1984 (Ramzan vs. State of Rajasthan and others). The writ petitions were heard together and by a common order dated 9.12.1986, this Court allowed the writ petitions and set aside the order of District Collector cancelling the sale of land in favour of auction purchasers on the ground that no opportunity of hearing was given to any of the auction purchasers by the Collector before passing the order dated 13.8.1984. This Court made it clear that it will be open for the Collector to initiate proceedings under Section 27(A) of the Rajasthan Panchayat Act, 1953 (for short "the Act of 1953"), if he feels so advised.

After about 7 years, several revision petitions were submitted by the Panchayat Extension Officer. Copy of one such revision petition is placed on record as Annex.19. The only ground taken in the revision petition against sale of land by Gram Panchayat was that the land was sold below the market rate and by this, loss has been caused to the Gram Panchayat. It appears from copy of revision petition that no factual foundation has been laid for the allegation of sale of land below market price. It appears from the copy of revision petition that nothing has been said about the

delay in filing the revision petition, even when the High Court permitted the respondents to take steps by order dated 9.12.1986.

The petitioners submitted reply to the notice issued to them by Additional Collector, Jaisalmer in the above revision petitions. The petitioners specifically pointed out that the land was auctioned to them in the year 1983 and the revision petition has been filed in the year 1993 after 10 years and during this period, the petitioners enjoyed property and also invested huge amount to develop the land and, therefore, the revision petition deserves to be dismissed. Apart from this, the petitioners seriously disputed the allegation of sale of land below the market price.

The Additional Collector, after hearing, allowed the revision petitions vide separate orders but all dated 3.6.1993. The Additional Collector observed that he has perused the record and also considered the entire report about auction proceedings and observed that the enquiry officer in his report found that the land in question was sold on very low price and that it was given to the persons of one community namely, Vishnoi and that the land has been sold to the relatives of Sarpanch and that before conducting the auction, it was not given due publicity.

It appears from the order dated 3.6.1993 that the only evidence which was available before the Additional Collector was the enquiry report and though not specifically mentioned by Additional Collector but it appears that on the basis of the said report only, the Additional Collector held that the land was sold on a low price and due publicity was not given before conducting the auction.

The petitioners, who are sixteen in number, have preferred the present writ petition to challenge the order dated 3.6.1993.

Learned counsel for the petitioners vehemently submitted that the order of Additional Collector dated 3.6.1993 deserves to be set aside only on the ground that the Additional Collector should not have set aside the sale of land in favour of the petitioners in a revision which has been filed after inordinate delay.

According to the learned counsel for the petitioners even when permission is granted by the appellate court or any higher court to take action, then that action should have been taken with promptness and the authority who has been given liberty to litigate the matter again cannot sit tight over the matter for years together and thereafter

initiate the proceedings. In support of this, learned counsel for the petitioners relies upon a judgment of the Hon'ble Supreme Court delivered in the case of Bombay Metropolitan Region Development Authority, Bombay vs. Gopak Patel Volkart Ltd. and others reported in (1995) 1 SCC 642.

Learned counsel for the petitioners further submitted that the Additional Collector relied upon the enquiry report which was never the foundation of the revision petition as there is no reference of such enquiry report in the revision petition filed by the respondents. It is also submitted that the enquiry report was never provided to the petitioners and that was used against the petitioners without giving the petitioners an opportunity to meet with the allegations levelled in the enquiry report. The petitioners could have shown the Additional Collector that the facts recorded in the enquiry report are perse wrong and they would have been found wrong from the record of the Panchayat itself. Learned counsel for the petitioners submitted that the evidence which was never brought to the notice of the petitioners neither could have been looked into nor could have been made the basis for passing the orders against the petitioners. In support of this, learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court delivered in the case of State

Bank of India and others vs. D.C. Aggarwal and others reported in (1993) 1 SCC page 13 and judgment of this Hon'ble Court delivered in the case of Major Radha Krishna vs. Union of India and others reported in 1993 (2) W.L.C. Page 293.

According to learned counsel for the petitioners, the impugned order is factually wrong. The petitioners specifically pleaded in the writ petition that the respondent Panchayat itself held the auction of plots on 30.1.1985 and 31.1.1985, 15.3.1985 and 16.3.1985 & 21.3.1985 and 22.3.1985 and in all these auctions, plots were sold for almost same price at which the plots in question were auctioned to the petitioners in the year 1983. The petitioners also placed on record letters of the Gram Panchayat as Annex.37A to 37C. In addition to this, it is also submitted by the petitioners that the area of Village Lathi is backward and even in bigger place like Jaisalmer, the land was auctioned by the Notified Area Committee in the year 1984 at a rate of Rs.1.25 per square feet.

According to learned counsel for the petitioners, the above facts have not been denied by the respondents in their reply so far as the price is concerned. It is also submitted that when the land was disposed of by holding auction and when there is no allegation that the villagers formed a group and by

pooling, they did not allow the market price to come on record by giving low bid. Therefore, when there is no material available on the record to show that what was the market price, then the learned Collector had no material to hold that the land was sold on low price.

Learned Dy. Govt. Advocate apearing on behalf of State vehemently submitted that the complaints were received by the Collector and enquiry was conducted and in enquiry, it was found that the land was sold by Sarpanch of Gram Panchayat to the persons of his community and to his relatives below the market price of the land. It is also submitted that this Court even after setting aside the earlier order of cancellation of plots permitted the authorities to take action in accordance with law for cancellation of plots. It is also submitted that for revision, there is no period of limitation prescribed and, therefore, even if there was a delay in filing the revision petition, then the revisional authority had jurisdiction to condone the delay and since the Additional Collector allowed the revision petition, therefore, it may be presumed that the revisional authority exercised its discretion and condoned the delay and, therefore, this Court may not interfere in such discretionary order passed by the revisional authority.

Learned Dy. Govt. Advocate further submitted that

the documents which are placed on record by the petitioners in relation to the subsequent auction of the land were never before the Additional Collector and, therefore, the petitioner cannot challenge the order of Additional Collector on the basis of evidence which was not placed before the Additional Collector when he decided the revision petition. It is also submitted that the petitioner's allegation about sale of land subsequently by the Gram Panchayat and at Jaisalmer is not relevant because the cost of land depends upon the area where the plot is situated and there may be difference of price for different plots though situated in the same village. Therefore, the evidence placed on record by the petitioners is not proving the market rates of the plots which were auctioned by the Gram Panchayat during the period from 1.10.1983 to 8.5.1984.

I have considered the submission of learned counsel for the parties and have perused the record.

The writ petition deserves to be allowed on various grounds. First of all, the order of Additional Collector dated 3.6.1993 deserves to be dismissed only on the ground that the power was exercised by the revisional authority after inordinate delay of at least 6-7 years after the order passed by this Court dated 9.12.1986. The only allegation in the year 1984

against the auction of the plots was that the land was sold below the market price and only on that ground alone, the plots were cancelled by the Collector. Therefore, the fact came to the notice of the Gram Panchayat and State Government in the year 1983-84 itself about allegation of selling the plots below the market price of the Gram Panchayat.

In the year 1986, this Court again permitted the respondents to initiate proceedings under Section 27A of the Act of 1953, if the Government is so advised. After the order of this Court dated 9.12.1986, the atuhorities could not have waited for seven years for taking decision or for obtaining advise whether to proceed in the matter or not. It appears that the revision petition has been filed in the year 1993 for cancellation of plots which were sold in the year 1983-84 without explaining any reasons for not initiating the proceedings in last seven years. Therefore also, the Additional Collector was under obligation to decide whether there is any reason to entertain the revision petition after such an inordinate delay. It is a case of non-application of mind on issue of limitation and not a case of implied condonation of delay. Section 3 of the Indian Limitation Act is a bar against entertaining petition after a period of limitation.

It is true that there is no limitation prescribed for preferring revision petition under the Act of 1953 but it is settled law that where no period of limitation is prescribed, then also, the action is required to be taken within a reasonable period and in some of the cases, even delay of two years was found to be not a reasonable period.

So far as the period of limitation is concerned, it can be liberally construed but where property rights are involved and there is no stay order against the enjoying party, then the party in possession may act adversely to his own interest by incurring expenditure on immoveable property. Even in cases where no such act is done by the allottee, then also by passing of time, he reasonably believed that his right is not being challenged by anybody and thereby he may feel that he is secured having immoveable property with him and need not to search another immoveable property for his residence or business and by lapse of time, it may become sometimes impossible for the allottee to purchase the land for having roof over his head, therefore, when the State authorities themselves, who alienate the property by following the procedure prescribed under any Act, find complaints or irregularity (in procedure), then action should be taken without any delay because the delayed action is not only more adversely affect the allottees but also

affect the revenue of the State or the property of the State for which the authorities are custodian only and are expected to act as a prudent man and act of prudence in such matters relating to public property is much more onerous and requires care because the private person may destroy his own property but no such right is available to the persons occupying the government post with a right to manage including disposing of the immoveable property of the Government because it is property of the public. It is true that when in a case, there are allegations of fraud and collusion between the allottees and officers who could have taken action, then there may be liberal approach for condonation of delay so as to protect the public interest but where allegations are not of fraud or collusion and when the matter has come to the notice of all the competent authorities and they do not take any action in time, then, those persons may be held liable for damages and it is not necessary to condone the delay merely on the ground that there are some allegations against the disposal of the immoveable property. Each case is required to be examined on the facts of that case.

If the argument of learned Dy. Govt. Advocate is accepted that the price of land for different plots in even a small village can vary, then also the order dated 7.6.1993 is an order passed without application

of mind as the Additional Collector did not determine the price of the land which was sold and merely pass the order on the basis of the report in which it is said that the land was sold at a low price than the market rate of the plot.

The order of Additional Collector further deserves to be set aside as the enquiry report which was relied upon by him was never brought to the notice of the petitioners nor any opportunity was given to the petitioners to meet with the allegations which are levelled in the enquiry report. If the facts as found by the Additional Collector are considered with the facts which are not in dispute about the sale of land by the Gram Panchayat on 31.1.1985 to 22.3.1985, then the observation made in the enquiry report itself become seriously doubtful.

The learned Additional Collector referred the facts mentioned in the said enquiry report. These facts are also relevant. It is said in the enquiry report that the plots were allotted to the persons of one community i.e. Vishnoi and to the relatives of Sarpanch whereas the names of all allottees are mentioned in the order of District Collector, Jaisalmer which clearly shows that the land was sold not only to members of Vishnoi Community but that has been sold to the persons of not only different caste

but to the persons belonging to different religion also. It is also submitted that the area is occupied by the members of communities of Vishnoi and Muslim cannot be disputed. It is also submitted that the present writ petition has been filed by 16 persons and out of 16, 4 persons from Vishnoi Community, 1 is from Maheshwari community, 1 is khatik and rest are Musalmans.

I need not to enquire into the matter whether the area is occupied by the members of Vishnoi Community or Muslim Community alone but the fact remains that the Additional Collector felt influenced by the enquiry report wherein it has been mentioned that the plots were sold to members of Vishnoi Community and to the relatives of the Sarpanch, which is factually wrong. There are number of persons belonging from Vishnoi Community but no relation of any of them has been shown with the Sarpanch.

I do not find any force in the submission of learned Dy. Govt. Advocate that the material which has been placed regarding cost of land or sale of land relating to the subsequent auction, sale of land by Gram Panchayat were not before the Additional Collector. Firstly since the petitioners were not given opportunity to rebut the facts mentioned in the enquiry report and secondly, the facts mentioned in

the writ petition have not been disputed by the respondents and thirdly, the respondents have not placed on record any material to show that the land price was more.

Further, since the plots were allotted to the petitioners in the year 1983 and there is no dispute that they are in possession and this Court, while issuing notice, passed an order to maintain status quo with respect to possession, therefore also, it will be absolutely unjust to dispossess the auction purchasers from the land in dispute after more than 22 years.

In view of the above, this writ petition is allowed and the orders dated 3.6.1993 passed by the Additional Collector, Jaisalmer passed in the matter of the petitioners are quashed and set aside.

(PRAKASH TATIA), J.

S.Phophaliya